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STEPHEN B. DAVIS
BRISTOL-MYERS SQUIBB COMPANY
PATENT DEPARTMENT
P O BOX 4000
PRINCETON, NJ 08543-4000

COPY MAILED

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OFFICE OF PETITIONS

In re Patent No. 6,774,212	:	DECISION ON REQUEST FOR
Wei Han	:	RECONSIDERATION OF
Issue Date: August 10, 2004	:	PATENT TERM ADJUSTMENT
Application No. 09/728,653	:	and
Filed: December 1, 2000	:	NOTICE OF INTENT TO
Attorney Docket No. PH-7118	:	ISSUE CERTIFICATE OF
	:	CORRECTION
	:	

This is a decision on the "PETITION TO CORRECT PATENT TERM ADJUSTMENT PERIOD IN GRANTED PATENT," filed September 20, 2004. This request is properly considered pursuant to 37 CFR 1.705(d). Patentees request that a 41 day reduction be removed and the term be re-adjusted to 164 days.

The request for reconsideration of the patent term adjustment indicated on the patent is **GRANTED** to the extent indicated herein.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of one hundred sixty-four **(164)** days.

Patentee is given **TWO (2) MONTHS** from the mail date of this decision to respond to this decision. No extensions of time will be granted under § 1.136.

On August 10, 2004, the above-identified application matured into U.S. Patent No. 6,774,212. The instant request for reconsideration was timely filed within two months of the date the patent issued. See § 1.705(d). The Patent issued with a revised Patent Term Adjustment of 107 days. Patentee states that the term was reduced by 41 days due to "Workflow Drawings Finished" which is incorrect as there are no drawings in this case.

Patentee's argument is well-taken. There are no drawings in this application. No drawings were required and no drawings were filed after the mailing of the notice of allowance. Nor was any other paper warranting a reduction of the PTA filed after the mailing of the notice of allowance. The entry of a period of adjustment of 41 days was made in error.

Moreover, a review of the record reveals that due to printer error the patent issued without an additional period of adjustment of 16 days for Office delay in issuing the patent. The patent issued on August 10, 2004, three years and 253 days after its filing date. The period of delay under 35 U.S.C. 154(b)(1)(B) and § 1.702(b) is 253 days. See § 1.703(b).

However, if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004). In this instance, 237 of the 253 days of delay attributable to the delay in issuance of the patent overlap with the periods of delay totaling 237 days attributable to grounds specified in § 1.702(a)(1) and § 1.702(a)(4). The remaining non-overlapping period of adjustment of 16 days was entered in the application to reach a period of adjustment of 253 days, the actual number of days of delay. However, due to printing error, the additional 16 days was not reflected in the revised Patent Term Adjustment shown on the patent.

Given the removal of the 41 day period of reduction and the reinstatement of the 16 day period of adjustment, the patent term adjustment indicated in the patent should be one hundred sixty-four (**164**) days (253 - 89).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one hundred sixty-four (164)** days.

Patent No. 6,774,212

Application No. 09/728,653

Page 3

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

Karin Ferriter
per

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of DRAFT Certificate of Correction